

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,) File No. 20-cr-168
Plaintiff,) (WMW/ECW)
vs.) St. Paul, Minnesota
Montez Terriel Lee, Jr.,) January 14, 2022
Defendant.) 10:48 a.m.

BEFORE THE HONORABLE WILHELMINA M. WRIGHT
UNITED STATES DISTRICT COURT JUDGE

(SENTENCING HEARING)

APPEARANCES (Via Zoom Videoconference):

For the Plaintiff: U.S. Attorney's Office
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Minneapolis, Minnesota 55415

For the Defendant: Rivers Law Firm, P.A.
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P R O C E E D I N G S

IN OPEN COURT

(VIA ZOOM VIDEOCONFERENCE)

(Defendant present)

COURTROOM DEPUTY: The United States District Court for the District of Minnesota is now in session. The Honorable Wilhelmina Wright is presiding.

THE COURT: Thank you. Good morning, everyone.

COURTROOM DEPUTY: The matter before the Court is Case Number 20-cr-168, United States of America vs. Montez Terriel Lee, Jr.

Counsel, please note your appearance.

MR. CALHOUN-LOPEZ: Good morning, Your Honor. Thomas Calhoun-Lopez on behalf of the United States.

THE COURT: Good morning, Mr. Calhoun-Lopez.

MR. RIVERS: Good morning, Your Honor. Bruce Rivers on behalf of Mr. Montez Lee, who appears via Zoom.

THE COURT: Thank you. Good morning, Mr. Rivers, and good morning, Mr. Lee.

We are here appearing today by Zoom, and so I will ask that everyone who is listening to mute your device so that we don't have background noise that interferes with our ability to proceed today.

Now, Mr. Lee previously pleaded guilty to arson on property used in interstate commerce, and that's a violation

1 of Title 18, United States Code, Section 844(i).

2 And, Mr. Calhoun-Lopez, have you received a copy
3 of the Presentence Investigation Report and the addendum?

4 MR. CALHOUN-LOPEZ: We have, Your Honor.

5 THE COURT: Okay. And, Mr. Rivers, have you and
6 Mr. Lee received a copy of the Presentence Investigation
7 Report and the addendum?

8 MR. RIVERS: We have, Your Honor, and I've
9 reviewed it with him.

10 THE COURT: I didn't hear the last part of what
11 you said.

12 MR. RIVERS: I said we've received it and I
13 reviewed it with Mr. Lee.

14 THE COURT: Okay. And, Mr. Lee, are you able to
15 think clearly today?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: And, sir, do you know why you are here
18 attending this hearing?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Okay. Before moving on to other
21 matters, I want to ask about the documents that we have
22 currently under seal.

23 Under our Local Rule 49.1(c)(2), certain documents
24 are automatically unsealed when the judgment is entered
25 unless I order otherwise, and that would include in this

1 case documents which are letters of support that were filed
2 at Docket Number 79.

3 Does either party move to keep these materials
4 under seal?

5 MR. RIVERS: No, Your Honor.

6 MR. CALHOUN-LOPEZ: The government does not, Your
7 Honor.

8 THE COURT: I didn't hear you.

9 MR. CALHOUN-LOPEZ: Sorry, Your Honor. The United
10 States does not move if Mr. Lee does not.

11 THE COURT: Okay. And am I correct that neither
12 the United States nor Mr. Lee objects to the Presentence
13 Investigation Report?

14 MR. CALHOUN-LOPEZ: The government has no
15 objections, Your Honor.

16 MR. RIVERS: Likewise, Your Honor, the defense has
17 no objections to the PSR.

18 THE COURT: Okay. Mr. Calhoun --

19 MR. CALHOUN-LOPEZ: The government has no
20 objections, Your Honor.

21 THE COURT: Thank you. We are going to take a
22 brief break here.

23 (The Court and courtroom deputy confer)

24 THE COURT: Then I adopt as the findings of this
25 Court all of the factual statements that are contained in

1 the Presentence Investigation Report.

2 Now, is the government moving for an additional
3 one-level reduction in offense level for acceptance of
4 responsibility?

5 MR. CALHOUN-LOPEZ: We do so move, Your Honor.

6 THE COURT: Okay. Then that motion for an
7 additional one-level reduction for acceptance of
8 responsibility under Section 3E1.1(b) of the sentencing
9 guidelines is granted.

10 And I determine that the sentencing guidelines
11 apply as follows: First, a total offense level of 35, a
12 Criminal History Category of IV, an imprisonment range of
13 235 to 240 months, a supervised release term of one to three
14 years, a fine range of 40,000 to 250,000 dollars, and a
15 special assessment of \$100.

16 Does either the United States or Mr. Lee have any
17 corrections or any objections to my guideline calculations
18 in light of my findings and rulings?

19 MR. CALHOUN-LOPEZ: The government does not, Your
20 Honor.

21 MR. RIVERS: The defense doesn't either, Your
22 Honor.

23 THE COURT: Okay. We're going to take a brief
24 recess at this point. I need to get the statement that I
25 need to make regarding the CARES Act, and I don't have it at

1 the bench with me. Before we proceed, we need to make those
2 findings for us to proceed virtually today.

3 So we'll take a brief recess. Thank you.

4 (Recess taken at 10:54 a.m.)

5 * * * * *

6 (11:05 a.m.)

7 **IN OPEN COURT**

8 THE COURT: So thank you for your patience. We
9 are back on the record in this matter. I realized, with the
10 assistance of my law clerks, that I had not reviewed the
11 findings with Mr. Lee that need to be made for us to be
12 proceeding by video.

13 And so, Mr. Lee, I want to make sure that you are
14 consenting to having this hearing by video as opposed to in
15 person in the courtroom today. So I am going to ask you
16 some questions and explain what your rights are as to that
17 aspect and then we'll proceed, if you wish to proceed.

18 So through your counsel, as I understand it, you,
19 Mr. Lee, consented to holding today's sentencing hearing by
20 way of videoconference. Is that correct?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Okay. And do you understand that you
23 may choose not to consent to having the sentencing hearing
24 today by videoconference and instead have that hearing in
25 person at a later time?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Okay. And have you had an opportunity
3 to discuss this with Mr. Rivers, your attorney?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: And do you have any questions for me
6 or for Mr. Rivers about your decision?

7 THE DEFENDANT: No, I do not.

8 THE COURT: Okay. And, Mr. Lee, has the United
9 States or has anyone else made any promises to you in order
10 to get you to consent to having this sentencing hearing
11 today by video?

12 THE DEFENDANT: No, Your Honor.

13 THE COURT: And so no one has forced you or
14 threatened you or coerced you in order to get you to consent
15 to today's video hearing; is that correct?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Okay. And so do you consent to the
18 video hearing voluntarily and of your own free will?

19 THE DEFENDANT: Yes, I do.

20 THE COURT: And are you able to think clearly
21 today?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Okay. And so you knowingly and
24 intelligently and voluntarily give up your right to have the
25 sentencing hearing in person in the courtroom at a later

1 date; is that right?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Okay. And so in light of the exigent
4 circumstances that are brought on by our COVID-19 pandemic,
5 today's sentencing hearing is being conducted by video.

6 And the CARES Act allows today's hearing to be
7 conducted by videoconference when the Judicial Conference of
8 the United States finds that emergency conditions due to the
9 national emergency declared by the President under the
10 National Emergencies Act with respect to COVID-19 will
11 materially affect the functioning of the federal courts,
12 when the chief judge of the district specifically finds that
13 felony sentencings cannot be conducted in person without
14 seriously jeopardizing public health and safety, and the
15 district judge in a particular case finds for specific
16 reasons that the plea or sentencing in the case cannot be
17 further delayed without serious harm to the interests of
18 justice.

19 And so in accordance with the CARES Act, I make
20 the following findings:

21 Our President has declared a national emergency in
22 response to COVID.

23 The Judicial Conference of the United States found
24 that emergency conditions with respect to COVID-19 have
25 materially affected and will materially affect the

1 functioning of the federal courts.

2 And Chief Judge Tunheim on December 6, 2021
3 ordered the Court to continue to hold criminal proceedings
4 by videoconference when the defendant consents to appearing
5 at the proceeding remotely.

6 And so I specifically find that, because of the
7 COVID pandemic, holding this hearing by videoconference will
8 allow Mr. Lee to be sentenced without delay and,
9 accordingly, I find that the interests of justice will be
10 served by holding this hearing by videoconference.

11 So, for all of these reasons, I find that we
12 cannot delay further this hearing in this case without
13 serious harm to the interests of justice.

14 Now, does either party object to the findings that
15 I have just made?

16 MR. CALHOUN-LOPEZ: The United States does not
17 object, Your Honor.

18 THE COURT: Mr. Rivers?

19 MR. RIVERS: No objection from the defense, Your
20 Honor.

21 THE COURT: Okay. And are there any additional
22 findings that counsel would like the Court to make with
23 regard to the remote manner in which we are holding this
24 sentencing hearing by video?

25 MR. CALHOUN-LOPEZ: No, Your Honor.

1 MR. RIVERS: No, Your Honor.

2 THE COURT: Okay. Now, am I correct, then, as to
3 the sentencing, that neither the United States nor Mr. Lee
4 has moved for a departure under the sentencing guidelines;
5 is that correct?

6 MR. CALHOUN-LOPEZ: The government has not moved
7 for a departure, Your Honor.

8 THE COURT: Mr. Rivers --

9 MR. RIVERS: That is --

10 THE COURT: I didn't hear you.

11 MR. RIVERS: That is correct, Your Honor.

12 THE COURT: Okay. I apologize for interrupting
13 you.

14 So then we will proceed to the allocution stage of
15 the hearing. Mr. Rivers, you may make your arguments in
16 favor of a variance and say anything else on behalf of
17 Mr. Lee.

18 MR. RIVERS: Your Honor, first I want to just
19 start off by saying it has been an absolute privilege to
20 represent Mr. Lee. He is, by all means, a very thoughtful
21 person with a very colorful and tumultuous background.

22 Mr. Lee on this particular day, as I've indicated
23 in my position pleading, was caught up in a mass protest
24 against police violence. And what makes this offense
25 different, I think, most is that it wasn't done for personal

1 gain out of a need to protest.

2 And the offense itself, when it happened, he did
3 check to see if there was anybody in the building. And so
4 you can tell from his motivations, you know -- and the
5 government talked about luck and misfortune, and I think
6 that's something here that can't be lost, is how had the
7 situation been a little bit different, we wouldn't be here
8 today. Had Mr. Lee made different decisions, we wouldn't be
9 here today.

10 But he, from the very outset, gave to law
11 enforcement a full and complete statement and admitted his
12 conduct. He's expressed remorse. He's pled guilty.

13 And I just want the Court also to know that the
14 challenge to the guidelines that I initially intended to
15 bring was on me and not on any kind of lack of acceptance
16 from Mr. Lee. It was just merely more of a technical legal
17 challenge, and he agreed to withdraw that challenge.

18 I think that, you know, the guideline factors, as
19 outlined by both the government and myself, have been fairly
20 well addressed in our position pleading, so I am not going
21 to belabor those.

22 But it is a serious offense and I think it does
23 require a serious sentence, not one that is reflected in the
24 guidelines. The criminal history might be a little bit
25 overstated, and I think that the guidelines purposes and

1 3553 is served by the reasons we stated in our position
2 pleadings.

3 And with that said, he's got a lot of support. He
4 is a thoughtful man and I would ask Your Honor --

5 (Zoom transmission interrupted)

6 THE COURT: We just lost you or lost what you last
7 said. You said, "He is a thoughtful man," and then I did
8 not hear anything else.

9 MR. RIVERS: And I would ask you to sentence him
10 to 88 months.

11 THE COURT: Okay. Thank you.

12 Now, Mr. Lee, before I impose your sentence, you
13 have the right to address the Court as well. Is there
14 anything you would like to say on your own behalf?

15 THE DEFENDANT: Yes, Your Honor.

16 I wish I knew what to say to make it all okay or
17 to be able to go back in the past and take back my hurtful
18 actions. I can't begin to express the amount of remorse
19 that I feel for all those affected by the decisions I made.

20 My intentions were never meant to bring harm or
21 disruption to anyone's life. I was hoping to be another
22 voice added to the cry for change. I wanted to be part of
23 the solution. Instead I was part of the problem. I helped
24 tear the city down instead of lending a hand to help repair
25 it.

1 And although I don't stand by my actions, I stand
2 by my reasoning behind them. For years the black community
3 has been the target for injustice, abuse, hate, and police
4 brutality. Racial profiling has led to the numerous and
5 senseless murders of my people with no one to hold those
6 accountable for their actions.

7 What scares me the most is that it could be
8 somebody I know whose death is televised for the world to
9 see. It could be a friend, my brother, or my son. This is
10 the type of environment I am forced to raise my children in,
11 a world where I'm demonized for the color of my skin, the
12 fact that racism is still relevant.

13 Understand I am no civil rights activist. I grew
14 up gang-banging and selling drugs. I was a stereotypical
15 black man with no guidance and no future to look forward to.
16 I was raised thinking that I would end up dead or in prison.

17 Ironically, I tried so hard to steer myself to a
18 better path that I ended up exactly where I didn't want to
19 be. I had hopes of starting my own business, going back to
20 college, providing my children with a better life than what
21 I was given, looking forward to being able to raise them
22 right. I just hope that instead of losing that opportunity,
23 that I am given a second chance.

24 I know what it's like to not have both parents in
25 your life, and I don't want to take my kids through that.

1 They deserve better, which is why I want to apologize to
2 Nikko and Aliyah. I am sorry I haven't been there for you
3 since being locked up. I know it's been hard on you guys,
4 and I am going to do everything in my power to right my
5 wrongs, to be the father you need me to be.

6 I want to say sorry to the family of Oscar Lee
7 Stewart. I can't imagine what you guys have been going
8 through since his death. Nothing I can say could ever make
9 it better or more bearable. I never meant for anyone to get
10 hurt, and I hope you believe me when I say I took
11 precautions of making sure of that. And although I don't
12 know what happened to him that night, if I didn't start that
13 fire he may have been alive today. I hope his family truly
14 understands how I am sorry for their loss.

15 To anyone I may have let down, just know I had
16 good intentions. I will continue to try to better myself
17 and my community, to learn what I should and educate when
18 I can.

19 To the owners and employees of the Max It Pawn
20 shop, I'm sorry for the destruction I caused. I took away
21 your guys' livelihood. I disrupted your lives off a
22 split-second decision. I never took the time to think of
23 who I would be hurting. You guys depended on those
24 paychecks. I have no idea what type of domino effect I may
25 have caused.

1 To everyone who has shown me some support over the
2 last year and a half, I thank you. I've received so many
3 letters from people across the U.S. and overseas that it's
4 been hard to keep up with. I thank you all for seeing me as
5 something more than a criminal. I have never had this type
6 of support ever in my life. I have had people tell me I
7 inspire them. I have had students from Minnesota colleges
8 call me their hero. Everyone from professors to doctors,
9 lawyers and anyone in between writing to tell me they
10 support me in the cause.

11 I refuse to not learn from this experience. I
12 hope to make something positive out of it. I have read too
13 many stories of people coming from prison and making a huge
14 impact on their community. This moment in life doesn't
15 define who I am, but it can help mold me into the person I
16 want to become, who I know I can be.

17 I want to thank the Minnesota Uprising Arrestee
18 Support for being there for me since I started this journey.
19 I wouldn't have been able to manage without you guys.

20 To Kaylee, thank you for not leaving my side
21 throughout all of this. You have always seen something more
22 of me even when I couldn't. I'm hoping I am given a chance
23 to do right by you.

24 Finally, to Les, you inspire me to be a better
25 person. I'm glad I have such a positive role model to learn

1 from.

2 Thank you.

3 THE COURT: Thank you, Mr. Lee.

4 Mr. Calhoun-Lopez, you may make your arguments in
5 favor of a variance and say anything else that you would
6 like on behalf of the United States.

7 MR. CALHOUN-LOPEZ: Thank you, Your Honor.

8 Let me begin just by noting that Mr. Lee's
9 statement there was clearly very thoughtful and very
10 powerful, and I believe he should be commended for that.
11 And, of course, Mr. Rivers makes very good arguments as
12 well.

13 Your Honor, this is a difficult case. It is one
14 that challenges many aspects of our criminal justice system,
15 and it's a case informed by very significant aggravating and
16 mitigating circumstances. And based on those circumstances,
17 we are requesting that the Court impose a sentence of
18 144 months' imprisonment. This is a downward variance, of
19 course, from the guideline range of 235 to 240 months.

20 As we addressed, as everybody has recognized, Your
21 Honor, the most important aspect of this case is the life of
22 Oscar Lee Stewart. I have talked to his family, and I know
23 how much they love him and how much they miss him. And as
24 the defendant has recognized, Mr. Lee's actions cut that
25 life short and took Mr. Stewart away from his loved ones.

1 And, of course, there is nothing that any of us can do today
2 to bring their loved one back.

3 And that fact, of course, appropriately drives the
4 guideline range in this case. It speaks to the inherent
5 dangers of arson. It is a crime that is by its nature
6 chaotic and uncontrollable. It's a crime in which
7 surrounding homes and businesses may be inadvertently
8 destroyed and firefighters or people trapped in the building
9 may be hurt or killed. And in this case, Mr. Stewart has
10 paid the cost for that dangerous disregard for others.

11 But we also recognize, Your Honor, that it is
12 important in this case -- Mr. Lee's motivation for
13 committing the crime is important in this case. The
14 evidence does appear clear that Mr. Lee did not intend to
15 hurt anybody.

16 There appear to have been people in those chaotic
17 days looking only to exploit the chaos and disorder in the
18 interest of personal gain or random violence. As Mr. Rivers
19 pointed out, Mr. Lee does not count among them.

20 There were people out there as well who felt angry
21 and frustrated and disenfranchised and who were attempting
22 in many ways, in an unacceptably reckless and dangerous
23 manner, to give voice to those feelings, and Mr. Lee does
24 appear to be in that category.

25 His reasons in this case for setting that fire

1 matter. We -- in our sentencing position we quoted
2 Mr. King's point, that a riot is the language of the
3 unheard. Mr. Lee was terribly misguided, as he himself as
4 recognized, and his actions had unthinkable consequences,
5 but we agree that he appears to have believed that he was,
6 in Dr. King's words, engaging in the language of the
7 unheard.

8 And we do believe, we do agree that it is to his
9 credit that he immediately took responsibility for his
10 actions and withdrew his objection to the PSR.

11 Your Honor, in light of all those factors, we do
12 believe that a sentence of 144 months is sufficient. No
13 sentence can bring Mr. Stewart back nor adequately reflect
14 the value of his life, but we believe that a downward
15 variance in this case will provide just punishment for the
16 crime.

17 Thank you.

18 THE COURT: Thank you, Mr. Calhoun-Lopez.

19 Now, are there any victims of Mr. Lee's conduct
20 who wish to be heard?

21 MR. CALHOUN-LOPEZ: Your Honor, we have consulted,
22 and they do not. They have been listening and, of course,
23 are deeply invested in the Court's sentence, but they did
24 not feel the need to address the Court. Thank you.

25 THE COURT: Okay. Thank you.

1 I have carefully reviewed the Presentence
2 Investigation Report and the addendum to that report. I am
3 now prepared to impose the sentence.

4 I am grateful for the comments that have been made
5 here today: Mr. Rivers, you on behalf of Mr. Lee; Mr. Lee,
6 your comments today as well; and Mr. Calhoun-Lopez.

7 Particularly Mr. Lee, the insight that you have
8 shown even in your words today on this most important day
9 for you, one that I have to believe everybody who is here
10 either present in person or virtually wishes we weren't here
11 for this reason.

12 It's clear from the comments that you've made that
13 you have a lot to contribute to this world, and spending any
14 time in prison impedes your ability to fully contribute all
15 that you have.

16 And, frankly, the world needs you. The world
17 needs someone who is thoughtful, who is intelligent, who can
18 make a difference, and yet we're here today for a sentencing
19 as a result of a violent act that you committed.

20 It is the judgment of the Court that you, Montez
21 Terriel Lee, Jr., are sentenced to prison and that is for a
22 term of 120 months.

23 No fine is imposed.

24 Restitution is mandatory, but no requests have
25 been made at this time. You're ordered to pay restitution

1 in the amount of zero dollars at this time.

2 You must pay a special assessment in the amount of
3 \$100 to the United States, and that is due immediately.

4 On release from your imprisonment you will be
5 placed on supervised release, and that will be for a term of
6 three years. While you are on supervised release, you must
7 comply with the following conditions:

8 (Extraneous background noise)

9 THE COURT: Now, I am hearing some speaking in the
10 background and so I am going to ask that whoever is
11 listening, please mute your device. I can tell that it's
12 not the lawyers who are speaking and that we are
13 overhearing. So will everyone who is listening please mute
14 your device.

15 (The Court and courtroom deputy confer)

16 THE COURT: I am also told that there's noise
17 around you perhaps, Mr. Lee, that I am hearing. But are you
18 having any trouble hearing me, Mr. Lee?

19 THE DEFENDANT: No, Your Honor.

20 THE COURT: Okay. So, Mr. Lee, you must comply
21 with the mandatory conditions of supervised release, and
22 those conditions are described in Section 5D1.3(a) of the
23 United States Sentencing Guidelines and these conditions
24 include:

25 That you must not commit any crimes: federal,

1 state, or local.

2 You must not unlawfully possess a controlled
3 substance.

4 You must refrain from any unlawful use of a
5 controlled substance, and you must submit to one drug test
6 within 15 days after your release from imprisonment and at
7 least two periodic drug tests thereafter as determined by
8 the probation officer.

9 You must cooperate in the collection of a DNA
10 sample as directed by Probation.

11 And you must make restitution in accordance with
12 Title 18, United States Code, Sections 2248, 2259, 2264,
13 2327, 3663, 3663A, and 3664.

14 You also must comply with the standard
15 conditions of supervised release, and those are described in
16 Section 5D1.3(c) of the United States Sentencing Guidelines.
17 Now, these conditions include:

18 That you must report to the nearest United States
19 Probation and Pretrial Services Office within 72 hours after
20 your release from prison, unless the probation officer
21 instructs you to do otherwise.

22 You must not possess a firearm, ammunition,
23 destructive device, or any other dangerous weapon.

24 You're also ordered to abide by the following
25 special conditions of supervised release:

1 First, you must abstain from the use of alcohol
2 and other intoxicants and not frequent establishments whose
3 primary business is the sale of alcoholic beverages.

4 You must complete an immediate assessment or
5 participate in a program for substance abuse as approved by
6 the probation officer upon your release or relapse during
7 your term of supervised release, and that program may
8 include testing and inpatient or outpatient treatment,
9 counseling, or support group. And, further, you must
10 contribute to the costs of such treatment as determined by
11 the United States Probation Office Co-Payment Program, not
12 to exceed the total cost.

13 You must participate in a psychological or
14 psychiatric counseling or treatment program as approved by
15 the probation officer. And, further, you must contribute to
16 the costs of such treatment as determined by the Probation
17 Office Co-Payment Program, not to exceed the total cost of
18 that treatment.

19 And if you're not employed at a regular lawful
20 occupation as deemed appropriate by the probation officer,
21 you may be required to perform up to 20 hours of community
22 service per week until you are so employed. And you also
23 may be required to participate in training, counseling,
24 daily job search, or other employment-related activities as
25 directed by the probation officer.

1 You must be screened for and/or participate in the
2 Re-Entry programming and you must abide by the rules -- or
3 the Re-Entry Court programming and you must abide by the
4 rules that govern that program. And participation may
5 include referrals for substance abuse assessment and/or
6 treatment and testing, mental health assessment and/or
7 treatment, cognitive behavioral programs, medication
8 compliance, and any other programming deemed appropriate to
9 enhance your successful re-integration into the community.
10 And you must contribute to the costs of this program as to
11 substance abuse and/or mental health assessment and
12 treatment to the extent that you are deemed capable by the
13 United States Probation Office.

14 You must not knowingly communicate or otherwise
15 interact, and that is either in person, through a third
16 party, telephone, mail, electronic device, social media
17 websites or applications or otherwise, with any member or
18 prospect of the Gangster Disciples Gang or any criminal
19 street gang, as defined in Title 18, United States Code,
20 Section 521, without obtaining the permission of the
21 probation officer.

22 And should restitution be determined, you must
23 also comply with the following special conditions:

24 You must provide the probation officer access to
25 any requested financial information, including credit

1 reports, credit card bills, bank statements, and telephone
2 bills.

3 And you're prohibited from incurring new credit
4 card charges or opening additional lines of credit without
5 approval of your probation officer.

6 And I do direct the probation officer to furnish
7 you a written statement of all of the conditions of your
8 supervised release.

9 Now, does Mr. Lee request a particular location
10 for his incarceration, Mr. Rivers?

11 MR. RIVERS: I would assume Minnesota. Is that
12 correct, Mr. Lee?

13 THE DEFENDANT: Yes.

14 THE COURT: Okay. So then I recommend that you be
15 incarcerated in a facility either in Minnesota or near
16 Minnesota.

17 Now I'll provide the reasons for the sentence that
18 I have imposed.

19 First, I've considered all of the Section 3553(a)
20 factors and I find that the sentence I've imposed is
21 sufficient, but it's not greater than necessary, to reflect
22 the seriousness of your offense, Mr. Lee, and to provide
23 just punishment for that offense; to deter you, Mr. Lee,
24 from committing crimes in the future; to deter others from
25 committing this crime or similar crimes in the future; to

1 protect the public from you, sir; and to avoid unwarranted
2 disparities between Mr. Lee's sentence and the sentences of
3 defendants with similar records who have been found guilty
4 of similar conduct and to avoid disparities between
5 Mr. Lee's sentence and the sentences of his co-defendants.

6 Now, the sentence of imprisonment that I have
7 imposed is appropriately tailored to the facts and to the
8 circumstances that are present here.

9 Mr. Lee, you're in court today -- or you're before
10 the Court today because you committed a serious offense.
11 You burned a building, and by doing so you killed a man.
12 And, in addition, your actions permanently damaged the lives
13 of members of your community and the broader Twin Cities
14 community.

15 And I understand that you've faced a great deal of
16 adversity in your life, Mr. Lee. I understand that you've
17 been abused for much of your childhood and you've
18 experienced absences from your parents -- or from your
19 mother. You were homeless for several years as a teenager.
20 You've lost friends to gun violence. You've struggled with
21 depression. You've struggled with anxiety and
22 post-traumatic stress disorder. And I will say no one
23 should have to endure the abuse and the loss that you have
24 experienced in your life, no one.

25 But you are a survivor and those experiences,

1 while they don't explain or excuse your actions and the
2 reason that you're here in court today, you are more than
3 your actions. You're more than the person who poured a fire
4 accelerant on a business and then lit it on fire. You're
5 more than the person who celebrated your actions on social
6 media as if there was nothing -- or as if there was anything
7 worth celebrating. You're more than the person that
8 destroyed that business by fire. You're more than the
9 person who set that fire, that ignited that fire, and that
10 killed a man.

11 And no matter how upset you may have been and you
12 may currently be, you are alive today. You have a future.
13 The victim of that fire does not. So while there are no
14 excuses for your actions on May 28, 2020, you have a chance
15 to move forward and live a productive life. You have a
16 chance to move forward and contribute to a better life for
17 yourself, to a better life for those that you love, and to a
18 better life for others.

19 I hope that you use your prison term to address
20 the struggles that you have, Mr. Lee, and to commit to
21 treating and working through your depression, your anxiety,
22 your PTSD.

23 And I hope that you also realize how your actions
24 impact others, how they impact them either in a positive way
25 because of the good that you're contributing to the world or

1 how your actions impact others in a negative way because of
2 the destruction that you're committing. And I hope you
3 choose the first. I hope you choose to contribute positive
4 actions.

5 You have a long life ahead of you. You're an
6 intelligent man. You're an able person. And you have some
7 experiences now that you can use as a force for good, even
8 though they were grounded in criminal behavior.

9 You can turn them around and certainly I hope that
10 you will turn your life around so that you are making a
11 change that is a positive one for yourself so that you
12 understand that your actions have consequences, and either
13 those actions can be negative actions and negative
14 consequences or they can be positive actions and positive
15 consequences. I hope that you will take it upon yourself to
16 do the latter, to choose a positive role.

17 The world needs what you have to offer that is
18 positive, that is good, that is intelligent, that is able to
19 help others do the right thing and for you to do the right
20 thing as well. We can't afford to waste you. We can't
21 afford to let you waste yourself.

22 I hope that you will build upon all that you have
23 and do so in a positive way so that you move forward and do
24 the hard work that it takes to move forward in a positive
25 manner and to enjoy some success in your life.

1 I know that you're worth it, frankly. I know that
2 you can do it, but it's not up to me to know it. What
3 matters is that you know you're worth it. What matters is
4 that you know that you can do it and that you prove it to
5 yourself; and that when you have doubts, because we all do,
6 I do and no doubt you do, when we have those doubts, we have
7 to look to others who can help us in a positive way.

8 And I hope that that's what you will do, that you
9 will reach out to people who can help you become the person
10 that you are certainly capable of being and the world needs
11 you to be. And I certainly hope that you never again appear
12 in a courtroom unless you want to be there.

13 Now, the length of supervised release that I have
14 imposed is warranted for two reasons: One, to protect the
15 public; secondly, to properly supervise and to assist you,
16 Mr. Lee.

17 I have imposed no fine because you lack the
18 financial means to pay one.

19 Now, restitution is mandatory for your offense and
20 that's pursuant to several laws, Title 18, United States
21 Code, Sections 2840 -- 2248, 2259, 2264, 2327, 3663, 3663A,
22 and 3664.

23 Now, I have not imposed restitution in any amount
24 because to date no restitution requests have been received.

25 Now, under Title 18, United States Code,

1 Section 3664(d)(5), if any victim's losses are not
2 ascertainable ten days prior to sentencing, I must, as the
3 Court, set a date for the final determination of victims'
4 losses. That date cannot be any later than 90 days after
5 sentencing.

6 And I'll ask: Mr. Calhoun-Lopez, are additional
7 restitution requests expected; and if so, what's the
8 government's position as to the date that should be set for
9 the final determination for victims' losses?

10 MR. CALHOUN-LOPEZ: Your Honor, we have reached
11 out to both the Max It Pawn shop and the family of
12 Mr. Stewart. As to the family, Your Honor, amounts of
13 restitution that can be paid are fairly limited by law and
14 statute, and the family has agreed that they have made --
15 they will make no restitution requests. Max It Pawn,
16 likewise, has elected not to make a restitution request. So
17 we do not anticipate any further requests and we believe
18 this restitution can be closed.

19 THE COURT: Okay. Very well. Then if any victim
20 discovers losses after the restitution amount is final, and
21 that will be today -- there will be no restitution amount
22 ordered -- they will have 60 days after the discovery of
23 those losses to petition the Court for an amended
24 restitution order, and that order may be granted only upon a
25 showing of good cause for failure to include those losses in

1 the initial claim for restitution.

2 Now, Mr. Lee, you have the right to appeal your
3 conviction if you believe that your guilty plea was unlawful
4 or invalid in any way. And you also have the right to
5 appeal your sentence to the extent that you have not waived
6 that right to appeal as part of your plea agreement.

7 And if you wish to appeal your conviction, your
8 sentence, or both, you must file a Notice of Appeal within
9 14 days after the entry of judgment of conviction in this
10 case.

11 And if you cannot afford to pay the cost of an
12 appeal, you can ask for permission to be excused from paying
13 the costs; and if you make that request, then the Clerk of
14 Court will file a Notice of Appeal on your behalf.

15 And the Presentence Investigation Report will be
16 kept in the Court's files under seal; and if an appeal is
17 filed, the report will be delivered to the United States
18 Court of Appeals for the Eighth Circuit.

19 Mr. Lee is currently in custody. The Mandatory
20 Detention Act does apply. So at the conclusion of this
21 hearing, you are remanded to the custody of the United
22 States Marshals, Mr. Lee.

23 Is there anything further that needs to be
24 addressed by the Court? I'll ask Mr. Calhoun-Lopez first.

25 MR. CALHOUN-LOPEZ: Your Honor, I'm sorry. I am

1 in communication with my victim/witness specialist. May I
2 ask the Court's indulgence for just 30 seconds to make sure
3 that I understand everything correctly before we close the
4 hearing today?

5 THE COURT: Yes, you may.

6 MR. CALHOUN-LOPEZ: Thank you, Your Honor.

7 THE COURT: You're welcome.

8 (Pause)

9 MR. CALHOUN-LOPEZ: Thank you, Your Honor. I
10 apologize. I misunderstood something, but fortunately our
11 office's victim/witness specialist has corrected me.

12 When I spoke to the family, I was under the
13 impression that they were not making a restitution request,
14 but apparently that has either changed or I misunderstood.
15 They will be submitting a request for \$842 for Mr. Stewart's
16 cremation, and so we will submit a request for that.

17 And I would ask the Court to hold restitution open
18 for one week for the parties to submit those documents and
19 get this resolved.

20 THE COURT: Okay. Thank you.

21 Any objection, Mr. Rivers?

22 MR. RIVERS: No, Your Honor.

23 THE COURT: Okay. Then I will hold open the
24 request for restitution until we receive it. We will hold
25 the matter open and will not finalize that issue, and I will

1 allow for two weeks from today's date for it to be
2 submitted. I hope it's submitted sooner than that, but we
3 will, though, allow that amount of time to receive that
4 request.

5 MR. CALHOUN-LOPEZ: Thank you, Your Honor.

6 THE COURT: Is there anything further that we need
7 to address at this time?

8 MR. CALHOUN-LOPEZ: Not from the government, Your
9 Honor.

10 THE COURT: From Mr. Lee, Mr. Rivers?

11 MR. RIVERS: No, Your Honor.

12 THE COURT: Okay. So, Mr. Lee, you are currently
13 in custody. The Mandatory Detention Act does apply. You
14 are remanded to the custody of the United States Marshal at
15 the conclusion of this hearing.

16 Good luck to you, sir. I hope that you will be
17 well and I hope that you will use the time that you are
18 incarcerated to make very positive changes in your life so
19 that when you leave prison, you are able to be successful in
20 pursuing your dreams.

21 This concludes our hearing.

22 (Court adjourned at 11:48 a.m.)

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3 I, Lori A. Simpson, certify that the foregoing is a
4 correct transcript from the record of proceedings in the
above-entitled matter.

5 Certified by: s/ Lori A. Simpson

6 Lori A. Simpson, RMR-CRR
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